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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. SKYLER DAMON SMITH, Defendant and Appellant.	D075372 (Super. Ct. Nos. INF1402881, NF1600417)

APPEAL from a judgment of the Superior Court of Riverside County, Jeffrey L. Gunther, Judge. Judgment affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for the Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Laura Baggett, Deputy Attorneys General, for Plaintiff and Respondent.

In December 2014 (case No. INF1402881, the first case) the Riverside County District Attorney filed an information charging Skyler Damon Smith with possessing heroin (Health & Saf. Code, § 11350, subd. (a); count 1), possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 2), possessing methamphetamine while armed with a loaded firearm (Health & Saf. Code, § 11370.1; count 3), being armed with an assault weapon (Pen. Code, § 30605, subd. (a); count 4), and being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1); count 5). The trial court denied Smith's suppression motion relating to a search of his casita.

In December 2016 (case No. INF1600417, the second case) Smith was charged with possessing methamphetamine (Health & Saf. Code, § 11378; count 1), sale or transport of methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 2), possessing methamphetamine while armed with a loaded firearm (Health & Saf. Code, § 11370.1; count 3), being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1); count 4), and being a felon in possession of ammunition (Pen. Code,[1] § 30305, subd. (a); count 5).

The trial court granted the People's motion to consolidate the cases, and the first amended information included all 10 counts. The People further alleged that Smith suffered two prison priors (§§ 667.5, subd. (b)). During trial, the court denied a second suppression motion concerning a search of Smith's motorcycle in the second case.

A jury found Smith guilty of all 10 counts and the court found true the two prison priors. The trial court sentenced Smith to 10 years eight months in prison. Smith

1 Undesignated statutory references are to Penal Code.

appeals, asserting the court erred in denying his suppression motions. We reject Smith's arguments and affirm the judgment.

In a supplemental brief, Smith relies on *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*) to argue that the trial court could not legally impose a $10,000 restitution fine and a $300 court facilities assessment without first determining his ability to pay. He requests that we vacate the assessment and stay the restitution fine until the People prove he has the ability to pay. We reject his arguments.

DISCUSSION

I. *GENERAL LEGAL PRINCIPLES*

The Fourth Amendment to the United States Constitution prohibits the government from conducting unreasonable searches and seizures of private property. (U.S. Const., 4th Amend.; *Arizona v. Gant* (2009) 556 U.S. 332, 338; *People v. Macabeo* (2016) 1 Cal.5th 1206, 1213.) Warrantless searches "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." (*Katz v. United States* (1967) 389 U.S. 347, 357, fns. omitted.) As relevant here, well-delineated exceptions to the warrant requirement include exigent circumstances, inventory searches, and plain-view searches. (68 Am.Jur.2d (2010) Searches and Seizures § 114, p. 237.)

A defendant may move to suppress evidence on the ground that "[t]he search or seizure without a warrant was unreasonable." (§ 1538.5, subd. (a)(1)(A).) "A warrantless search is presumptively unreasonable, and the prosecution bears the burden of demonstrating a legal justification for the search." (*People v. Simon* (2016) 1 Cal.5th

98, 120.) The prosecution must establish by a preponderance of the evidence the facts justifying a warrantless search. (*People v. Johnson* (2006) 38 Cal.4th 717, 729.) In reviewing a court's ruling on a suppression motion, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362 (*Glaser*).)

II. *FIRST CASE: CASITA SEARCH*

A. *Legal Principles*

" '[L]aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.' " (*People v. Troyer* (2011) 51 Cal.4th 599, 602 (*Troyer*).) The emergency aid exception to the warrant requirement turns on the existence of an objectively reasonable basis for believing that a person within the house requires immediate aid, not the subjective intent of the officers. (*Id.* at p. 605.)

" ' " 'There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.' " ' " (*Troyer, supra,* 51 Cal.4th at p. 606.) As one court explained, " 'the business of police[] . . . is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.' " (*Ibid.*, italics omitted.) "The possibility that immediate police action will prevent injury or death outweighs the affront

to privacy when police enter the home under the reasonable but mistaken belief that an emergency exists." (*Ibid.*) "When officers act in their properly circumscribed caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process." (*People v. Ray* (1999) 21 Cal.4th 464, 479 (*Ray*).)

B. *Background Facts*[2]

An officer with the Palm Springs Police Department and his partner were dispatched to a home following a call from a concerned citizen. The citizen reported that an unoccupied running car had been in the driveway of a residence for about 30 minutes. The officer met the citizen by the car and noted that the unoccupied car was running, the windows were up and foggy, the lights were on, and determined that a car rental company owned the vehicle. The officer became concerned that a person inside the home might be in distress or that criminal activity was afoot. The officer testified that his duties include welfare checks and that he had experienced a prior incident with similar circumstances where a person had been suffering from a diabetic coma. The officer heard no noise inside the house. The officer rang the doorbell several times and could hear the doorbell ringing inside the home. The officer or his partner also knocked on the door. The officers waited about 30 to 60 seconds for someone to answer the door, but received no response. The lack of any response concerned the officer.

The officers left the front door and walked the exterior of the residence to determine if an occupant was injured or crime was afoot. About 10 feet away from the

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2 The facts are based on the testimony given in connection with the suppression motion.

front door and under the same roofline the officer found a second door that appeared to be "an interior-type door" which led the officer to believe that the door was "part of and open to the main residence." The officer did not knock on the door, but moved the handle. The officer did not knock because he had no reason to believe doing so would alert anyone inside the residence. The officer did not know the interior layout of the house and did not know that the door led to a casita that lacked access to the front door.

Finding the door unlocked, the officer opened the door and announced "police." As the door opened, the officer saw an individual, who he knew to be a felon and not a resident of this home, lying on the floor looking back at him. This caused the officer to believe that crime was afoot.

After a "factually intense" analysis, the trial court denied the suppression motion. The court found the officer's testimony to be "very sincere, very honest" regarding the description of the scene and the officer's concerns. The court found that the officers waited a substantial period of time for a response after they rang the doorbell and knocked. The court concluded that the officer's failure to knock on the second door before entering was not unreasonable given "this was a one-roof situation. It wasn't the separate casita, which we see in this community on many occasion[s]. This was a contiguous part of the entirety of one structure . . . ."

During trial, the officer testified that after stepping into the room he saw Smith, another individual who he knew had a felony conviction, drug paraphernalia and what appeared to be methamphetamine in plain view. He later learned that Smith and the other individual were on probation and subject to search conditions.

C. *Analysis*

Smith contends that no objectively reasonable evidence of a crime or medical emergency existed when the officer, without knocking, opened the door to the casita, a residence separate from the main structure. We disagree.

"As the finder of fact in a proceeding to suppress evidence [citation], the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable." (*People v. Woods* (1999) 21 Cal.4th 668, 673.) Here, the trial court made several factual findings that: (1) the officer testified honestly regarding the description of the scene and the officer's concerns; (2) the officers waited a substantial period of time for a response after ringing the doorbell and knocking at the front door; and (3) the officer did not act unreasonably when he failed to knock on the second door before entering because the casita was under the same roof as the main structure. As a preliminary matter, Smith fails to argue that substantial evidence does not support these factual findings and any such argument is forfeited. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840 [issues not raised in the opening brief are forfeited].) Accordingly, we defer to the court's express and implied factual findings and independently determine whether, on those facts, the search was reasonable. (*Glaser*, *supra*, 11 Cal.4th at p. 362.)

First, an unoccupied vehicle left running in a residential driveway with its lights on for 30 minutes warranted a police investigation. These facts, standing alone, prompted a concerned citizen to contact the police and wait for the police to arrive. It

was objectively reasonable for the responding officer to investigate whether a person inside the home was in distress or criminal activity was afoot. The officer explained that his duties included welfare checks and that during a prior incident with similar circumstances a person had been suffering from a diabetic coma.

The officer found the front door locked and got no response after ringing the front doorbell and knocking on the door. These facts reasonably concerned the officer and justified further investigation because the lack of a response did not rule out a possible emergency involving an individual incapable of making any sound or a burglary. The officer thus acted reasonably when he checked a second door, under the same roofline, about 10 feet away from the front door. We agree with the trial court that the officer's failure to knock on the second door before opening the unsecured door and announcing "police" was not unreasonable considering the totality of the circumstances. Entering this second door was the only practical means to determine whether the property needed protection or someone required medical aid.

"Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as 'where the police reasonably believe that the premises have recently been or are being burglarized.' [Citation.] 'Although the case law attaches slightly greater weight to the protection of persons from harm than to the protection of property from theft, many of the cases involving possible burglaries or breakings and enterings stress the dual community caretaking purpose of protecting both. [Citations.]' [Citation.] Of necessity, officers may enter premises to resolve the situation and take further action if they discover a

burglary has occurred or their assistance is otherwise required." (*Ray*, *supra*, 21 Cal.4th at p. 473.)

We conclude that, in the particular circumstances of this case, the trial court properly denied Smith's suppression motion because the officer had an objectively reasonable basis for believing that a medical emergency might exist or that crime was afoot.

II. *SECOND CASE: MOTORCYCLE SEARCH*

A. *Legal Principles*

Vehicle inventory searches are "a well-recognized exception to the warrant requirement of the Fourth Amendment." (*Colorado v. Bertine* (1987) 479 U.S. 367, 371.) An inventory search may extend to the car's trunk, glove compartment, and closed containers located within the car. (*Id.* at p. 375.) "A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself." (*Florida v. Wells* (1990) 495 U.S. 1, 4.)

Inventory searches are typically performed by police when vehicles are impounded "[i]n the interests of public safety and as part of . . . 'community caretaking functions.' " (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368 (*Opperman*).) "When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody, [citation]; the protection of the police against claims

or disputes over lost or stolen property, [citation]; and the protection of the police from potential danger." (*Id.* at p. 369.) "Whether 'impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft.' " (*People v. Williams* (2006) 145 Cal.App.4th 756, 761 (*Williams*).)

To protect Fourth Amendment interests, inventory searches, and in particular the opening of closed containers, must occur pursuant to "standardized criteria" or an "established routine." (*Florida v. Wells*, *supra*, 495 U.S. at p. 4; *Williams*, *supra*, 145 Cal.App.4th at p. 761.) The requirement of guidelines for police discretion insures that inventory searches are not used as "a ruse for a general rummaging in order to discover incriminating evidence." (*Florida v. Wells*, at p. 4; *Williams*, at p. 761.)

B. *Background Facts*

During trial, Smith moved to suppress any evidence seized after police searched his motorcycle. Outside the jury's presence, the trial court heard testimony from an officer with the traffic division of the Palm Springs Police Department (the traffic investigator) who responded to a traffic collision involving a motorcycle. The motorcycle was blocking the roadway and needed to be towed away. Smith, the motorcycle driver, had already been transported to the hospital when the traffic investigator arrived at the scene.

The traffic investigator needed to impound the motorcycle as part of the traffic collision investigation. The impound process included completing a California Highway Patrol 180 form documenting the towing and inventory search of the vehicle. An

inventory search is normal procedure for a towed vehicle. The inventory search included determining the existence of valuable property, contraband, weapons, or any other items that could be dangerous to individuals with access to a tow yard where the vehicle may be left unsecured. The traffic investigator stated that the motorcycle would be taken to a police storage yard.

Before conducting the inventory search, the traffic investigator learned that hospital personnel had found a firearm on Smith. The traffic investigator performed a visual check of the motorcycle and noticed a single storage compartment underneath the seat. The storage compartment was large enough to house a handgun or ammunition. The officer unlocked the compartment using the ignition key. The compartment contained a black zippered bag. The black bag contained a wallet, sunglasses, and a white plastic baggie with a substance the officer believed to be methamphetamine.

The trial court found that the contents of the motorcycle needed to be inventoried to determine whether the motorcycle contained anything valuable. It rejected the defense argument that the traffic investigator was looking for contraband and not performing a required inventory search. Based on these findings, the court denied the suppression motion, concluding that the traffic investigator had conducted a lawful inventory search.

C. *Analysis*

Smith concedes that the police properly impounded his motorcycle as part of their community caretaking function. He contends that opening the locked compartment under the passenger seat of his motorcycle was unnecessary and a pretext for an investigation of criminal activity because the traffic investigator stated that the motorcycle would be

taken to a police storage yard. Accordingly, he claims the trial court erred when it denied the motion and failed to exclude the methamphetamine recovered during the search. We disagree.

Police inventory the contents of an impounded vehicle to document and secure valuable items and thus protect the police against claims or disputes regarding lost or stolen property. (*Opperman*, *supra*, 428 U.S. at p. 369.) Here, the traffic investigator testified that an inventory search to record the existence of valuable items is normal procedure for a towed vehicle and that such searches are documented by filling out a standard form. The traffic investigator testified that his search was consistent with police procedures, including a visual inspection and unlocking a storage compartment. These facts amply support the trial court's findings that the traffic investigator performed a required inventory search, that the search was not a pretext to look for contraband, and not performing the search would have resulted in uncertainty whether the motorcycle contained anything valuable.

The traffic investigator's use of the ignition key to unlock the storage compartment makes the opening of this compartment akin to opening a car trunk, which is permissible. (*Colorado v. Bertine*, *supra*, 479 U.S. at p. 375 [inventory search may extend to a car trunk and closed containers located within the car].) The fact the motorcycle would be towed to a police storage yard rather than a tow yard (a presumably less secure location), is a distinction without a difference. Police may potentially be liable for lost or stolen items, particularly valuables such as Smith's wallet, regardless of where the vehicle is

stored. Accordingly, the trial court reasonably concluded that the traffic investigator had performed a lawful inventory search aimed at securing the motorcycle and its contents.

III. *ABILITY TO PAY*

Smith contends that the trial court erred by imposing a $300 court facilities assessment (Gov. Code, § 70373), a $10,000 restitution fine (Pen. Code, § 1202.4, subd. (b)), and a stayed $10,000 parole revocation fine (Pen. Code, § 1202.45) without determining his ability to pay. He contends that the issue is not forfeited because the trial court made a legal error at sentencing, not a discretionary error, and it would have been futile to object.

The minimum fine for felony convictions is $300. (§ 1202.4, subd. (b)(1).) A trial court may consider inability to pay when "increasing the amount of the restitution fine in excess of the minimum fine . . . ." (§ 1202.4, subd. (c).) It is well established that a defendant forfeits a challenge to the trial court's imposition of a restitution fine above the statutory minimum for failing to consider his or her ability to pay if the defendant did not object in the trial court. (*People v. Nelson* (2011) 51 Cal.4th 198, 227 [alleged erroneous failure to consider ability to pay a $10,000 restitution fine forfeited by the failure to object]; *People v. Avila* (2009) 46 Cal.4th 680, 729 [forfeiture rule applies to claim that restitution fine amounted to an unauthorized sentence based on inability to pay].)

Here, unlike the defendant in *Dueñas*, *supra*, 30 Cal.App.5th 1157, who created an extensive record showing her inability to pay $220 in assessments and fines, Smith did not object in the trial court on the grounds that he was unable to pay, even though the trial court ordered him to pay a restitution fine well in excess of the statutory minimum. (*Id.*

at pp. 1161-1163; *People v. Castellano* (2019) 33 Cal.App.5th 485, 490 ["Consistent with *Dueñas*, a defendant must in the first instance contest in the trial court his or her ability to pay . . . ."].) Accordingly, we conclude that Smith forfeited his challenges to the assessment and fines. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1154 (*Frandsen*) [finding that defendant who failed to challenge assessments and maximum restitution fine at sentencing had forfeited his argument on appeal].)

Finally, we reject Smith's contention that an objection would have been futile because the holding in *Dueñas* "represent[ed] a dramatic and unforseen [*sic*] change in the law governing assessments and restitution fines." Even assuming the validity of this argument, trial courts are statutorily authorized to consider a defendant's "inability to pay" any restitution fine above the statutory minimum. (§ 1202.4, subd. (d).) Because the $10,000 restitution fine imposed is greater than the statutory minimum, it would not have been futile for Smith to request an ability to pay determination. Thus, Smith's failure to object to a $10,000 restitution fine is inexcusable, as is his failure to object to the much smaller $300 assessment. (*Frandsen*, *supra*, 33 Cal.App.5th at p. 1154 ["Given his failure to object to a $10,000 restitution fine based on inability to pay, Frandsen has not shown a basis to vacate assessments totaling $120 for inability to pay."].)

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.